

Emily A. Danchuk, Esq.  
DONIGER / BURROUGHS  
603 Rose Avenue  
Venice, California 90291  
Telephone: (207) 747-4135

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

TEXKHAN, INC., a California  
Corporation, individually and doing  
business as HYUP SUNG T.R.D.,

Plaintiff,

-against-

A & E STORES, INC., a New York  
Corporation, individually and d/b/a  
“STRAWBERRY”; PRETTY GIRL,  
INC., a New York Corporation; and  
DOES 1 through 10,

Defendants.

Civil Action No.

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR  
CONTRIBUTORY COPYRIGHT  
INFRINGEMENT

Jury Trial Demanded

Plaintiff TEXKHAN, INC., by and through its undersigned attorneys, hereby  
prays to this honorable Court for relief based on the following:

**JURISDICTION AND VENUE**

1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §  
101 *et seq.*

2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and (b).

3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

### **PARTIES**

4. Plaintiff TEXKHAN, INC., individually and doing business as HYUP SUNG T.R.D. (collectively “TEXKHAN”) is a corporation organized and existing under the laws of the state of California with its principle place of business in Los Angeles.

5. Plaintiff is informed and believes and thereon alleges that Defendant A & E STORES, INC., individually and doing business as “STRAWBERRY” (collectively “STRAWBERRY”) is a corporation organized and existing under the laws of the state of New York, with its principal place of business located at 1000 Huyler Street, Teterboro, New Jersey 07608 and is doing business in and with the state of New York.

6. Plaintiff is informed and believes and thereon alleges that Defendant PRETTY GIRL, INC., (“PRETTY GIRL”) is a corporation organized and existing under the laws of the state of New York, with its principal place of business located at 4609 1ST Avenue, Brooklyn, New York, 11232 and is doing business in and with the state of New York.

7. Plaintiff is informed and believes and thereon alleges that some of Defendants DOES 1 through 5, inclusive, are manufacturers and/or vendors of garments to named Defendant, which DOE Defendants have manufactured and/or supplied and are manufacturing and/or supplying garments comprised of fabric printed with Plaintiff’s copyrighted designs (as hereinafter defined) without Plaintiff’s knowledge or consent or have contributed to said infringement. The true

names, whether corporate, individual or otherwise of Defendants DOES 1-5, inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants by such fictitious names and will seek leave to amend this complaint to show their true names and capacities when same have been ascertained.

8. Defendants DOES 6 through 10, inclusive, are other parties not yet identified who have infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate, individual or otherwise, of Defendants DOES 6 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

9. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

### **CLAIMS RELATED TO DESIGN HA-1465**

1. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing. It allocated this design the name HA-1465 (hereinafter "Subject Design A"). This artwork was a creation of Plaintiff and Plaintiff's design team, and is, and at all relevant times was, owned

exclusively by Plaintiff. A true and correct image of Subject Design A is set forth hereunder.

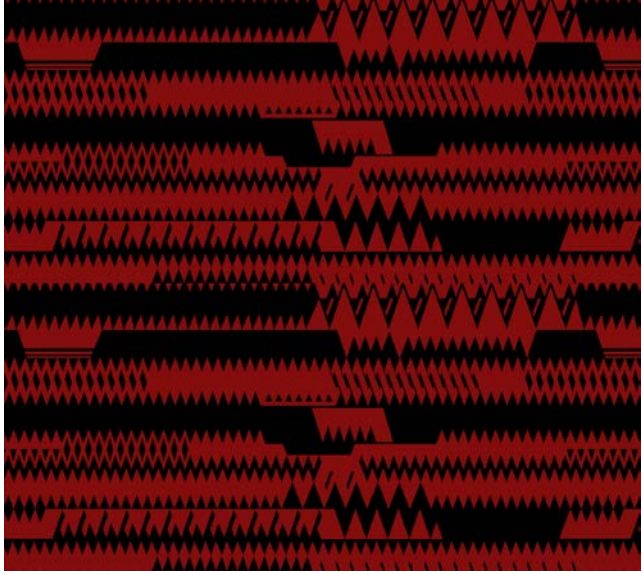

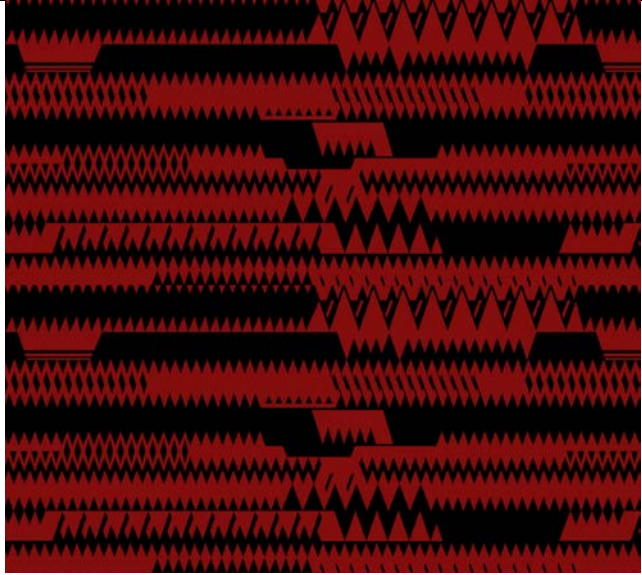

2. Plaintiff holds a United States Copyright Registration for Subject Design A.

3. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design A to numerous parties in the fashion and apparel industries.

4. Following Plaintiff's distribution of product bearing Subject Design A, Plaintiff's investigation revealed that certain entities within the fashion and apparel industries had misappropriated Subject Design A, and were selling fabric and garments bearing illegal reproductions and derivations of Subject Design A.

5. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization, certain infringing parties created, sold, manufactured, caused to be manufactured, and distributed garments comprised of fabric featuring designs which are identical to or substantially similar to Subject Design A (hereinafter "Infringing Product A") to several retailers, including but not limited to STRAWBERRY and PRETTY GIRL, which then sold said garments to the public. Such garments include, but are not limited to, the garments depicted hereunder, and as sold under, inter alia, Style No. NF-70 and SKU or Item Nos. 378360442 and 396215.

6. A true and correct comparison of Subject Design A and exemplars of the Infringing Product A is set forth below. It is apparent from a review and analysis of the comparison that the elements, composition, arrangement, layout, and appearance of the designs are substantially similar if not practically identical:

| Subject Design A  | Infringing Product A Exemplars   |
|---|--|
|    |   |
|  |  |

## **CLAIMS RELATED TO DESIGN HA-3156**

1. Prior to the conduct complained of herein, Plaintiff composed an original two-dimensional artwork for purposes of textile printing. It allocated this design the name HA-3156 (hereinafter “Subject Design B”). This artwork was a creation of Plaintiff and Plaintiff’s design team, and is, and at all relevant times was, owned exclusively by Plaintiff. A true and correct image of Subject Design B is set forth hereunder.

2. Plaintiff holds a United States Copyright Registration for Subject Design B.

3. Prior to the acts complained of herein, Plaintiff sampled and sold fabric bearing Subject Design B to numerous parties in the fashion and apparel industries.



4. Following Plaintiff’s distribution of product bearing Subject Design B, Plaintiff’s investigation revealed that certain entities within the fashion and apparel industries had misappropriated Subject Design B, and were selling fabric and garments bearing illegal reproductions and derivations of Subject Design B.

5. Plaintiff is informed and believes and thereon alleges that, without Plaintiff’s authorization, certain infringing parties created, sold, manufactured, caused to be manufactured, and distributed garments comprised of fabric featuring designs which are identical to or substantially similar to Subject Design B (hereinafter “Infringing Product B”) to several retailers, including but not limited to STRAWBERRY, which then sold said garments to the public. Such garments include, but are not limited to, the garments depicted hereunder, and as sold under, inter alia, Style No. DS872-MOSP and SKU or Item No. 427491144.

6. A true and correct comparison of Subject Design B and an exemplar of the Infringing Product B is set forth below. It is apparent from a review and analysis of the comparison that the elements, composition, colors, arrangement,



layout, and appearance of the designs are substantially similar, if not practically identical:

| Subject Design B   | Infringing Product B Exemplar   |
|--|---|
|  |  |

### **FIRST CLAIM FOR RELIEF**

(For Copyright Infringement – Against All Defendants, and Each)

7. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

8. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to Subject Design A and Subject Design B (collectively, the “Subject Designs”), including, without limitation, through (a) access to Plaintiff’s showroom and/or design library; (b) access to illegally distributed copies of the Subject Designs by third-party vendors and/or DOE

Defendants, including without limitation international and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments manufactured and sold to the public bearing fabric lawfully printed with the Subject Designs by Plaintiff for its customers.

9. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures garments and/or is a garment vendor. Plaintiff is further informed and believes and thereon alleges that said Defendant(s) has an ongoing business relationship with Defendant retailer, and each of them, and supplied garments to said retailer, which garments infringed the Subject Designs in that said garments were composed of fabric which featured unauthorized print design(s) that were identical or substantially similar to the Subject Designs, or were an illegal derivation or modification thereof.

10. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyrights by creating, making, and/or developing directly infringing and/or derivative work(s) from Subject Designs and by producing, distributing and/or selling garments which infringe the Subject Designs through a nationwide network of retail stores, catalogues, and through on-line websites.

11. The designs on the Defendants' garments are at least substantially similar to the corresponding design among the Subject Designs.

12. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

13. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

14. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Designs. As



such, Plaintiff is entitled to disgorgement of Defendant's profits directly and indirectly attributable to Defendant's infringement of the Subject Designs in an amount to be established at trial.

15. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

### **SECOND CLAIM FOR RELIEF**

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants)

16. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

17. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of garments featuring the Subject Designs as alleged herein.

18. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

19. By reason of the Defendants', and each of their acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will

continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

20. Due to Defendants', and each of their acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Designs. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of the Subject Designs, in an amount to be established at trial.

21. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment as follows:

#### **Against All Defendants**

##### **With Respect to Each Claim for Relief**

1. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Designs;
2. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants

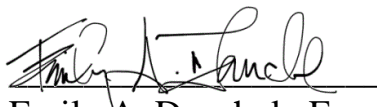
through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;

3. That a trust be imposed over the revenues derived by Defendants, and each of them, through the sales or distribution of the product at issue;
4. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. § 101 et seq.;
5. That Defendants, and each of them, account to Plaintiff for their profits and any damages sustained by Plaintiff arising from the foregoing acts of infringement;
6. That Plaintiff be awarded pre-judgment interest as allowed by law;
7. That Plaintiff be awarded the costs of this action; and
8. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

**A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND  
CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.**

Respectfully submitted,

Dated: June 22, 2018

By:   
Emily A. Danchuk, Esq.  
DONIGER / BURROUGHS  
Attorneys for Plaintiff  
CITY PRINTS, LLC